



POLICE DEPARTMENT

December 2, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Martha Lequerica
Tax Registry No. 906634
104 Precinct
Disciplinary Case No. 2013-9190

The above-named member of the Department appeared before me on May 22, 2014, charged with the following:

1. Sergeant Martha Lequerica, assigned to the 104th Precinct, on or about August 9, 2012, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Lequerica made disparaging remarks to Police Officer [REDACTED] regarding her ethnicity.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT
PROHIBITED CONDUCT

2. Sergeant Martha Lequerica, assigned to the 104th Precinct, on or about August 9, 2012, while at Transit District 1, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Lequerica touched Police Officer [REDACTED]'s buttocks with her open hand.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT
PROHIBITED CONDUCT

3. Sergeant Martha Lequerica, assigned to the 104th Precinct, on or about April 12, 2012, while on-duty and in a Department van, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Lequerica touched Police Officer [REDACTED]'s leg area and stated, in sum and substance, "nice calves."

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

4. Sergeant Martha Lequerica, assigned to the 104th Precinct, on one occasion on or about and between January 1, 2012 and June 1, 2012, while in a locker room in Transit District 1, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Lequerica touched and/or stroked Police Officer [REDACTED]'s hair without her permission.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

5. Sergeant Martha Lequerica, assigned to the 104th Precinct, on one occasion on or about September 24, 2012 and September 29, 2012, failed to obey the lawful order of a supervising officer by entering Transit District 1 without notifying and/or seeking permission from the Office of Equal Employment Opportunity.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

6. Sergeant Martha Lequerica, assigned to the 104th Precinct, on or about August 8, 2012, while at Transit District 1, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Lequerica attempted to prevent Police Officer [REDACTED] from exiting the Juvenile Room.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by John D'Alessandro, Esq., The Quinn Law Firm.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1-4 and 6. Respondent is found Guilty in part of Specification No. 5.

Introduction

Respondent was a supervisor in the Transit District 1 School Unit. Police Officer [REDACTED]¹ worked under Respondent's supervision. Some time in August 2012, [REDACTED] contacted the Office of Equal Employment Opportunity ("EEO") and filed five allegations of sexual harassment against Respondent.

The first allegation allegedly occurred on April 12, 2012. [REDACTED] and Respondent were in a Department van with several other officers. [REDACTED] claimed Respondent reached out, grabbed her leg, and stated "nice calves."

The second allegation allegedly occurred sometime between January 1, 2012 and June 1, 2012. [REDACTED] was on meal in the female officer's locker room with Police Officer Omaida Jiminian. At some point during their meal break Respondent entered the locker room. [REDACTED] claims Respondent sat down next to her and stroked her hair.

The third allegation allegedly occurred on August 8, 2012. [REDACTED] claimed she was directed into the juvenile room by Respondent. Once inside, [REDACTED] stated that Respondent held the door closed with her foot and requested [REDACTED] to work overtime with her.

The fourth allegation allegedly occurred on August 9, 2012. Respondent was conducting roll call for [REDACTED] and Jiminian. Trotta claimed after Respondent issued their assignments she slapped [REDACTED]'s buttocks as she walked away. The fifth allegation allegedly occurred later that day. [REDACTED] claimed Respondent referred to Dominican people as 'Dumb-inicans'. Respondent is Peruvian and [REDACTED] is Dominican. Then after

[REDACTED]

making the remark Respondent requested [REDACTED] pick a side in an earlier dispute that occurred between two officers. [REDACTED] refused and Respondent told her to get out of the vehicle. [REDACTED] had to walk back to the precinct.

After [REDACTED] filed the complaint Respondent was directed to report to the EEO office. There, she was informed that she was transferred and ordered not to enter Transit District 1 without first contacting the office. It is undisputed that on two dates after this meeting Respondent entered Transit District 1 without contacting EEO. The first incident occurred on September 24, 2012. On that date, Respondent entered the precinct to remove her personal effects from her locker. The second incident occurred on September 29, 2012. On that date, Respondent was assigned a detail that required her to muster at Transit District 1. Prior to the detail she entered the precinct for a supervisors' debriefing. After the detail she again entered the precinct to use the facilities and to make photocopies of old roll calls.

Respondent does not contest that she entered Transit District 1 on two separate dates without first contacting EEO. However, Respondent does contest all five allegations of sexual harassment and claim they were taken out of context and that her intentions were never sexual in nature.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer [REDACTED], Police Officer Omaid Jiminian, Police Officer Jose Morales and Sergeant Martha Harley-Lewis as witnesses.

Police Officer [REDACTED]

[REDACTED] was under Respondent's supervision while working for the Transit District 1 School Unit from September 2011 until August 2012. [REDACTED] stated their relationship was at first professional but became "very uncomfortable towards the end."

On April 12, 2012, [REDACTED] was assigned to a Department van with Police Officer Morales, Police Officer Jiminian, and Respondent. Respondent was sitting in the front passenger seat and [REDACTED] was sitting in the first row of seats behind her. At some point, Respondent turned around and grabbed [REDACTED]'s calf for a few seconds and stated "nice calves." She does not remember the details or events that led up to the incident. She testified she did not say anything in response but that the incident made her feel "very uncomfortable."

At some point between January 1, 2012 and June 1, 2012, [REDACTED] stated she was eating lunch with Jiminian in the female locker room. [REDACTED] was sitting on a couch and Jiminian was sitting across from her on a bench. Respondent entered the room and sat in a chair next to [REDACTED]. [REDACTED] testified Respondent began "caressing" her hair. [REDACTED] demonstrated to the Court that Respondent stroked the hair from the top of her head to the bottom of her hairline which ended near her neck. In response [REDACTED] moved away from Respondent. She stated that the incident made her feel "very uncomfortable" and she had not given Respondent permission to touch her hair.

On or about August 8, 2012, Respondent directed [REDACTED] to come to the juvenile room. [REDACTED] testified that when she entered the room, Respondent put her foot against the door and stated, "Isn't this crazy, I'm locking you into the juvenile room."

Respondent then asked [REDACTED] to work overtime with her that night. [REDACTED] said she could

not because she did not have her vehicle with her. Respondent offered to let [REDACTED] use her personal vehicle. [REDACTED] declined. Respondent removed her foot from the door and [REDACTED] "ran out." [REDACTED] stated the incident was "very awkward" and "uncomfortable." They were in the room for about 10 minutes.

On August 9, 2012, Respondent conducted roll call for [REDACTED]a and her partner, Jiminian. [REDACTED] and Jiminian were both standing and Respondent was sitting on a desk. [REDACTED] states after she received her assignment, she began to walk away when Respondent "slapped" her on the right side of her "buttocks." In her right rear pocket was her activity log. Again, she did not say anything to Respondent but stated the incident made her feel "very uncomfortable" and believed the contact was sexual in nature. On questioning by the Court, [REDACTED] stated the slap made contact with her buttocks.

Later that day, [REDACTED] and Jiminian were assigned to a post on 59th Street and Columbus Circle. At approximately 11:30 a.m., Respondent and Morales picked up the officers in order to take them to meal. At some point during the trip, Respondent informed [REDACTED] that she was assigned to the Dominican Day Parade detail. Respondent asked if she wanted to work the parade, [REDACTED] replied no, and Respondent retorted, "Well, you're working the 'Dumb-inican' Day Parade." Respondent repeated D-U-M-B-M-I-N-I-C-A-N-S several more times. [REDACTED] testified that the comment made her feel "very uncomfortable" but she did not respond.

Soon thereafter, Respondent began discussing a dispute between two female officers. Respondent asked [REDACTED] whose "side" she was on. [REDACTED] replied that she did not want to pick a side. Respondent told her to choose a side or get out of the car. [REDACTED] again stated that she was not picking a side. Subsequently, Respondent told her to exit

the RMP. [REDACTED] exited the vehicle holding her lunch in her hand. Respondent then stated to [REDACTED] "this is how 'Dumb-inicans' eat." Trotta left and walked back to the command.

Police Officer Omaida Jiminian

Jiminian was assigned to the Transit District No. 1 School Unit from September 2011 until December 2012. On April 12, 2012, Jiminian was assigned to a Department van with [REDACTED], Respondent, and Morales. Jiminian sat behind the operator and next to [REDACTED]. She stated she observed Respondent "tapping" [REDACTED]'s calf. Jiminian looked away and did not say anything. She did not recall if anything was said between [REDACTED] and Respondent.

At some point between January 2012 and June 2012 she and [REDACTED] were having their meal in the female locker room. The locker room was for female police officers. At some point, Respondent entered the locker room. Jiminian observed Respondent sit down next to [REDACTED] and "brush" [REDACTED]'s hair with her hand. Soon thereafter, Respondent got up and left the room. [REDACTED] relayed to Jiminian that she thought that was "weird." Jiminian testified that she did not hear [REDACTED] give Respondent permission to touch her hair and thought the incident was inappropriate.

On August 9, 2012, Jiminian was present at roll call with [REDACTED]. Both she and [REDACTED] were standing and Respondent was sitting on a desk. She observed Respondent "tapping" [REDACTED]'s activity log which was in [REDACTED]'s back pocket "by the buttocks area." She testified the incident did not make her feel uncomfortable.

Later that day she and [REDACTED] were on post at 59 Street and Columbus Avenue. At approximately 12:10 p.m., Respondent came by to pick them up. She testified that she heard Respondent say to [REDACTED] "something in terms of 'Dumb-inican.'" Respondent repeated it two or three more times. Jiminian is of Latin decent and did not take offense to the comment. However, she stated [REDACTED] "seemed upset." On questioning from the Court, she stated she did not remember if they were joking around at the time the comment was made but recalled that no one laughed. Moreover, she stated it might have started as a joke "but it didn't end up that way." Jiminian testified the incident made her feel "awkward."

Soon thereafter, Respondent began talking about the dispute between two officers and asked Jiminian to pick a side. She did. [REDACTED] did not and was asked to leave the RMP. [REDACTED] exited the vehicle with her lunch, a piece of chicken and a piece of fish. [REDACTED] was walking towards a garbage can when Respondent "jokingly" said "I'm going to take a picture of you" referring to [REDACTED]

Police Officer Jose Morales

Morales has been assigned to Transit District 1 since November 2003. He worked with [REDACTED] in the school unit from September 2011 until she left. He stated the relationship between Respondent and [REDACTED] was professional and became friendly. Also, he agreed members of the school unit had developed fairly friendly relationships. He told a story that there came a time when he was without a vehicle. Respondent had offered to let Morales use her vehicle to drive back and forth from work.

On April 12, 2012, Morales was assigned to a Department van with Respondent, Police Officers Brown, Jiminian, and [REDACTED]. Morales was in the driver's seat. [REDACTED] sat behind Respondent on the passenger side. Morales observed Respondent reach back with her left hand and touch [REDACTED] leg for about "three to five seconds." Morales did not recall if there was any exchange between Respondent and [REDACTED], but stated he did not think the incident was inappropriate.

On August 9, 2012, Morales was assigned as Respondent's driver. At around 11:30 a.m., [REDACTED] and Jiminian joined them in the RMP. Respondent and [REDACTED] were having a conversation over a type of Dominican cake [REDACTED] had recommended to Respondent. At some point Respondent said to [REDACTED] "Teresa, do you get it, 'Dumb-inican', 'Dumb-inican.'" Morales testified Respondent said "it was a joke" and that he himself was laughing. He did not hear if [REDACTED] responded. He testified that Respondent knew [REDACTED] was Dominican.

Soon thereafter, the conversation changed to the incident involving two female officers and a sergeant. Respondent wanted an opinion on who they would "root" for. Jiminian stated she would side with one of the officers and [REDACTED] did not answer. Respondent stated to her, "Answer or you're going to have to walk back to the command." [REDACTED] did not say anything. Morales, thinking it was a joke, stopped the RMP and again, Respondent asked [REDACTED] to "pick a side." He recalled [REDACTED] just exited the vehicle. Once [REDACTED] was outside the vehicle Respondent remarked, "This is how Dominicans eat." Morales testified Respondent then took a picture of [REDACTED].

Sergeant Martha Harley-Lewis

Lewis is an investigator with the Office of Equal Employment Opportunity ("EEO"). [REDACTED] first contacted her office in August 2012 to file a complaint against Respondent. On August 27, 2012, Respondent reported to Lewis's office for a meeting. Also present at that meeting was Inspector Rubin. Lewis had asked that Respondent avoid contact with [REDACTED]. Rubin instructed Respondent not to enter Transit District 1 without first contacting EEO. However, Respondent was given permission to "gather her things" the next day.

There came a time when Lewis was informed by Transit District 1's integrity control officer, Lieutenant Moore, that Respondent visited Transit District 1 on September 24, 2012, and again on September 29, 2012. Moore told Lewis on September 24, 2012, he had escorted Respondent to her locker to retrieve some of her belongings. Lewis stated prior to this incident Respondent did not contact EEO. However, Lewis agreed that if Respondent was ordered to retrieve items from her locker it would be different than if she went to the precinct on her own. Additionally, Moore told Lewis that on September 29, 2012, Respondent was assigned to a detail that gathered in front of Transit District 1. At some point she entered the precinct and had been seen by Captain Coates making photocopies of roll calls and other documents. Respondent told Coates she was gathering material for her case. Again, Respondent failed to notify EEO prior to entering the precinct.

During her official Department interview Respondent admitted to entering Transit District 1 on both dates and failing to contact EEO prior to the visits.

Respondent's Case

Respondent testified on her own behalf.

Respondent

Respondent is a 20-year sergeant in the Department and a 12-year veteran of the United States Marine Corps. She stated as time went by in the school unit, the officers became like a "family." She stated they dealt with the stress of the job by "joking around" and "making each other laugh." Respondent told a story about how Morales's personal vehicle broke down and that she offered to loan him one of her extra vehicles so that he could get to and from work. As for [REDACTED], she likened her to a "younger sister." She testified that she never flirted with [REDACTED] or had any romantic interest in her but, believed at one point, [REDACTED] had flirted with her. This was never reported to EEO or Respondent's supervisor.

Respondent was not able to recall the details surrounding the leg grabbing allegation. She suggested she may have tapped [REDACTED] as a way to get her attention or wake her up if she was starting to fall asleep. Upon questioning by the Court, Respondent relayed she is not in the habit of touching her subordinates, however, sometimes by impulse she will tap someone.

Respondent then addressed the hair touching allegation. She stated she does not recall specifically why she entered the female locker room. However, she did recall that [REDACTED] was fixing her hair and part of her hair had fallen. She stated she might have "flipped" [REDACTED]'s hair out of impulse. She compared it to brushing dandruff off someone

or straightening out another officer's collar brass. She testified it was not done in a "sexual" or "affectionate manner."

Respondent testified she did not recall any specific details surrounding the allegation that occurred in the juvenile room. But she contended it was "impossible" that she blocked the door with her foot. Respondent explained that sometimes overtime would come up unexpectedly and it was not uncommon for her to try to find volunteers before assigning it. Respondent stated in the past [REDACTED] had approached her to inquire about doing more overtime and that [REDACTED] was just more available to do overtime than the other officers in her unit.

Respondent testified she also did not recall any details surrounding the allegation that she slapped [REDACTED]'s buttocks. She suggested she might have been reminding [REDACTED] to write some summonses and had done so by pointing at [REDACTED] activity log.

Respondent was able to address the circumstances leading up to and surrounding the "Dumb-inican" comment. Prior to the incident she stated she was throwing a party and asked [REDACTED] if she knew of any good cake bakeries. [REDACTED]a had recommended a few to her. On August 9, 2012, Respondent had gone to [REDACTED]'s post to inspect and sign her activity log. Respondent relayed to [REDACTED] she was going to get some food. Since [REDACTED] was about to go on meal, Respondent offered to bring her somewhere to get food. [REDACTED] then asked Respondent about the party. Respondent told her the party was fine but expressed her dissatisfaction with the cake and referred to the bakers as "Dumb-inicans." Respondent, a Peruvian, explained "Dumb-inican" is a non-politically correct joke used in the Latin community. She stated her intention was to make everyone laugh. However, Respondent was aware that an EEO policy existed that prohibits members of the service

from making disparaging comments based on ethnicity or national origin. Last, she apologized and took full responsibility for the "very inappropriate joke."

There came a time when Respondent received a call from the Transit District integrity control sergeant informing her to report directly to EEO on August 27, 2012. At EEO she was told by Rubin she was transferred to Transit District 20. Respondent said she felt very hurt and "numb" by this news. She further testified that she did not recall being given the order to not enter Transit District 1 without first calling EEO. However, she did not dispute Lewis's testimony that the order was given.

At some point after that meeting at EEO, Respondent was contacted by Moore and told she had to clean out her locker at Transit District 1. Respondent made it clear to Moore that she felt very uncomfortable coming to the precinct when [REDACTED] was on duty. They agreed to meet on September 24, 2012, after her tour of duty in order to collect her property. Upon questioning by the Court, she did not think Rubin's order applied when Moore, the integrity control officer, ordered her to come to Transit District 1 in order to clean out her locker.

After her transfer, Respondent was notified to report to Transit District 1 for a detail on September 29, 2012. Before the start of the detail, an order was given for all supervisors to come inside the precinct for a "debriefing." Subsequently, Respondent entered Transit District 1 without notifying EEO. At the conclusion of the detail Respondent reported back to the front of Transit District 1 for return roll call. At that time Respondent again entered the precinct to use the facilities. And again, she did not notify EEO. Soon thereafter, Respondent began making copies of the sign-out copy of the roll calls and picked up the last of her personal property, a fan. She testified she was

using the copies to make sure her activity log was up to date. Captain Coates approached Respondent and asked what she was carrying in the bag. Respondent showed him the fan. Again, Respondent stated, "I didn't think that I had to call EEO when I got ordered to do something."

Last, Respondent apologized for putting Trotta through so much discomfort and pain. She wished Trotta would have brought it to her attention and she would have made a conscious effort to avoid all contact with her.

FINDINGS AND ANALYSIS

It is charged Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on five separate and distinct occasions she made inappropriate remarks or engaged in inappropriate behavior with a subordinate. Also, charged is Respondent's failure to obey a lawful order from a supervisor from the Office of Equal Employment Opportunity by entering Transit District 1 on two separate occasions.

Specification No. 1

Respondent was charged and admitted to making a disparaging remark. In sum and substance, Respondent referred to Dominicans as "Dumb-inicans." [REDACTED] and Respondent were engaged in a conversation when the remark was uttered. [REDACTED] seemed to be the only Dominican in the vehicle. The other present officers' Hispanic heritage is immaterial. Because of this, it is easy to conclude the remark's harmful effect was directed at [REDACTED]. Therefore, only [REDACTED]'s subjective interpretation of the remark should

be given weight. Additionally, this was not simply a slip of the tongue. Testimony from both Morales and Jiminian, the vehicle's other occupants, stated how Respondent made the remark several times in [REDACTED]'s presence.

Department policy prohibits ridicule and disparaging remarks against another based on their national origin². Respondent should be held strictly liable for her remark. Her intentions were irrelevant. Moreover, Respondent herself acknowledged the remark was not politically correct. Also, after making the remark it seemed that Respondent continued to antagonize [REDACTED] by giving her an ultimatum; choose sides in another officers' quarrel or exit the vehicle. [REDACTED] did not choose a side and subsequently, Respondent told her to exit the vehicle. [REDACTED] disposed of her lunch and was left to walk back to the precinct alone. Jiminian summarized it best when she concluded what might have started as a joke did not end up that way.

Accordingly, Respondent is found Guilty of Specification No. 1.

Specification No. 2

Respondent was charged with touching [REDACTED]'s buttocks. [REDACTED] testified Respondent "slapped" her on the right side of her buttocks, making contact, as she walked away. Jiminian also testified that she observed Respondent "tapping" [REDACTED]'s activity log by the buttocks area. Respondent was unable to recall any details from the incident.

The Department's sexual harassment policy³ states:

Conduct which can, in certain circumstances, be considered sexual harassment includes, but is not limited to, sexually suggestive remarks,

² P.G. 205-36, page 1-2.

³ P.G. 205-36, Note, page 3

pictures, gesturing, verbal harassment or abuse of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary or unwanted touching, patting or pinching.

Also, in analyzing allegations of sexual harassment, weight will be given to the victim's subjective point of view. From the weight of the evidence and Respondent's inability to offer contradicting testimony, I find that physical contact did in fact occur between Respondent and [REDACTED]. Here, [REDACTED] believed the incident was sexual in nature and she further testified it made her feel "very uncomfortable." Clearly the contact was unwanted. Moreover, whether it was a slap or a tap, Respondent's physical contact with [REDACTED] was inappropriate under Department guidelines.

Accordingly, Respondent is found Guilty of Specification No. 2.

Specification No. 3

Respondent is charged with touching [REDACTED]'s leg and stating, in sum and substance, "nice calves." [REDACTED] was seated in a van with Respondent, Morales, and Jiminian. [REDACTED] testified Respondent reached back, grabbed her leg, and stated "nice calves." Morales testified he observed Respondent reach back and touch [REDACTED] leg for a few seconds. Jiminian testified she saw Respondent "tapping" [REDACTED] calf. Again, Respondent was unable to offer any relevant testimony.

It seems uncontested that there was physical contact between Respondent and [REDACTED]. Again, whether it was a grab, tap or touch is irrelevant. [REDACTED] testified the incident caused her to feel "very uncomfortable." Considering this I find the contact with [REDACTED]'s calf was both unwanted and inappropriate. The "nice calves" remark only further distinguishes this incident as inappropriate.

Accordingly, Respondent is found Guilty of Specification No. 3.

Specification No. 4

Respondent is charged with touching/stroking [REDACTED]'s hair. [REDACTED] testified she was on meal in the female officer's locker room. Respondent entered the locker room, sat down beside [REDACTED], and began "caressing" her hair. Jiminian, who was also present, recalled seeing Respondent "brush" [REDACTED]'s hair. Respondent testified she did not remember why she entered the female officer's locker room but, was able to recall [REDACTED] had been adjusting her hair and suggested she may have "flipped" a fallen piece.

First, it is unusual that a sergeant would enter an officer's locker room. From the testimony there appears to be no reason or necessity for Respondent's presence there. Next, during her testimony [REDACTED] demonstrated for the Court how Respondent stroked her hair, from the top of her head to the bottom of her hairline. Jiminian gave a similar account. Respondent's suggestion that she may have flipped [REDACTED]'s hair is unconvincing. Because of this I find [REDACTED] and Jiminian's testimony of events much more credible.

Here, I will give more deference to the type of physical contact that occurred. Had it merely been a simple flip of the hair this charge would not stand. However, the act of stroking or brushing one's hair is much more intrusive. Moreover, [REDACTED] never gave Respondent permission to touch her hair. Both [REDACTED] and Jiminian found the incident inappropriate.

Accordingly, Respondent is Guilty of Specification No. 4.

Specification No. 5

Respondent is charged with failing to obey a lawful order by entering Transit District 1 on two separate occasions. Respondent was told by Inspector Rubin to not enter Transit District 1 without first notifying EEO.

The first incident occurred on September 24, 2012. At some point prior, Respondent was contacted by Lieutenant Moore and told she needed to remove her personal belongings. Cleaning out your locker is an inevitable consequence of being transferred. Considerations were given to [REDACTED] work schedule and thereafter they agreed upon a suitable time for Moore to escort Respondent into Transit District 1. Respondent entered the precinct under direction of one supervisor, however, in violation of another. It is uncontested that Respondent should have called EEO before entering the precinct but it is also reasonable for Respondent to believe entering the precinct under these circumstances was permitted.

The second incident occurred on September 29, 2012. Respondent was notified for a detail that required her to muster in front of Transit District 1. Prior to the detail, supervisors were directed into the precinct for a meeting. I also believe entering the precinct without first contacting EEO under these circumstances was reasonable. However, after the detail's conclusion, Respondent again entered the precinct without notifying EEO. This was not permissible. Here, she was not under direction or order of another supervisor nor was she engaging in a job related function. Respondent was seen by her commanding officer making photocopies of roll calls for her own personal reasons. This behavior clearly violated the spirit of the order issued by Rubin at EEO.

Accordingly, Respondent is Guilty in part of Specification No. 5.

Specification No. 6

Respondent is charged with preventing [REDACTED] from leaving the juvenile room. Respondent directed [REDACTED] to the juvenile room. Once inside, [REDACTED] testified Respondent held the door closed with her foot and stated, "Isn't this crazy, I'm locking you in the juvenile room" and proceeded to request they work overtime together. Respondent, again, could not recall details surrounding that particular incident but stated it was not uncommon for overtime to come up unexpectedly and in such instances she would attempt to find volunteers before assigning it.

By itself, this charge would fail. It is seemingly an innocuous event. However, when taken in conjunction with the other allegations from [REDACTED] it violates the Department's sexual harassment policy⁴ in that it contributed to the creation of an intimidating and hostile work environment. [REDACTED] herself testified the "awkward" incident left her feeling uncomfortable and she ran out of the room.

Accordingly, Respondent is Guilty of Specification No. 6.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on February 28, 1994. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of all five allegations of sexual harassment and discrimination. Respondent was found Guilty in part of failure to obey a lawful order.

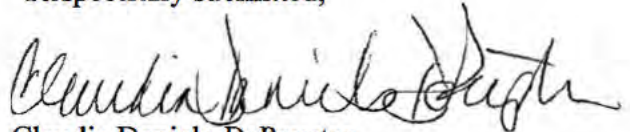
⁴ P.G. 205-36, page 2

The Advocate recommended that Respondent forfeit 30 vacation days for the six specifications.

In determining a penalty recommendation, I have taken into consideration the penalties imposed in previous cases where supervising members of the service were engaged in similar conduct with subordinates. *In Case No. 2008-83562* (Aug. 14, 2008), a 15-year captain who had no prior formal disciplinary record forfeited 20 vacation days for kissing a subordinate without her permission. Also considered was *Case No. 2001-77531* (Aug. 14, 2002), where a 31-year lieutenant with no prior formal disciplinary record forfeited 15 vacation days for making disparaging and sexual remarks to a female subordinate.

I have also taken into consideration Respondent's performance evaluations, her Department Recognition Summary, and the fact she has no prior disciplinary record in over 20 years of service. Therefore, it is recommended that Respondent forfeit 25 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner - Trials

APPROVED
DEC 19 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT MARTHA LEQUERICA
TAX REGISTRY NO. 906634
DISCIPLINARY CASE NO. 2013-9190

In 2013 and 2011, Respondent received an overall rating of 4.5 “Highly/Extremely Competent” on her annual performance evaluations. In 2012, Respondent received a rating of 4.0 “Highly Competent.” Respondent has received three Excellent Police Duty medals in her career to date.

[REDACTED]

On July 15, 2013, Respondent was placed on Level II Discipline monitoring based on the substantiated OEEA allegations in this matter. Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials